

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOANN FONZONE,

Plaintiff,

v.

JOE OTERI, et al,

Defendants.

CIVIL ACTION  
NO. 12-5726

**ORDER**

**AND NOW**, this 12<sup>th</sup> day of July, 2019, after a status conference with the parties in this matter and a review of all pending motions, it is hereby **ORDERED** as follows:

1. Plaintiff's Motion to Compel (Docket No. 135) is **DENIED**; and
2. Plaintiff's Motion to Compel Answers (Docket No. 137) is **DENIED**<sup>1</sup>.

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<sup>1</sup> Plaintiff seeks to compel answers to interrogatories from Defendants and non-parties to this action in both of her pending motions. To the extent Plaintiff is seeking to compel answers to discovery from Defendants in this action, her motion is denied, as Defendants answered Plaintiff's discovery requests over three years ago and Plaintiff never addressed any deficiencies in these responses with Defendants or the Court. To the extent Plaintiff's motions are seeking to compel discovery responses from non-parties, her motions are denied, as this Court has no authority to compel individuals who are not parties to this action to answer discovery requests.

Next, after the status conference in this matter that was held on June 19, 2019, it became apparent that there is some confusion on Plaintiff's part as to which defendants remain in this case and which of her claims are still pending before the Court. Therefore, I will briefly clarify these issues.

The only remaining Defendants in this matter are the City of Philadelphia, Officer Kelechewiscky, Officer Ortiz, Officer Bee and Officer Kovacs. Defendants, Joe Oteri and the Philadelphia Phillies, were dismissed from this matter by the Honorable Legrome Davis pursuant to an order dated June 3, 2015 (Docket No. 42). In that order, Judge Davis gave Plaintiff until June 18, 2015 to file an amended complaint to address the deficiencies in her pleading as to Defendant Oteri and the Phillies. (*Id.*) Plaintiff failed to file an amended complaint until July 7, 2015. Pursuant to an order dated July 22, 2015, Judge Davis found that Plaintiff's amended complaint failed to correct the deficiencies as to Defendant Oteri and the Phillies and dismissed these two defendants from this action **with prejudice**. Subsequently, Judge Davis entered three **additional** orders on motions from Plaintiff in which he reaffirmed his July 22, 2015, decision that Defendant Oteri and the Phillies were dismissed from this matter. (*See* Docket Nos. 55, 74, and 76.) Accordingly, Defendant Joe Oteri and the Philadelphia Phillies are not defendants in this matter and have not been since July of 2015.

**BY THE COURT:**

/s/ **JEFFREY L. SCHMEHL, J.**

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Jeffrey L. Schmehl, J.

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In Plaintiff's untimely July 7, 2015, amended complaint, she also attempted to bring in numerous other defendants, and insert new claims regarding the handling of her state court criminal matter. (Docket Nos. 46 and 48.) These new defendants were John Evans, Riverside Prison, C.O. Fisher, Philadelphia Warrant Unit, Philadelphia Defender Association, Richard Patton, Elizabeth Kotchian, David Ayers and Greg Engle. (Docket No. 46). In his July 22, 2015, order, Judge Davis addressed these new defendants and new claims as follows: "Plaintiff's request for leave of Court to include supplemental claims is DENIED. As explained in our Order dated June 3, 2015 (Docket No. 43), Plaintiff's allegations of various problems with the prosecution of her criminal case – as best as we can discern what her additional claims allege, given the apparently omitted paragraphs in Plaintiff's filing – cannot be properly joined because the claims lack common questions of law or fact. Plaintiff's new claims that she refers to in her petition as Counts VII and VIII are STRICKEN." (Docket No. 51.) As these new defendants that Plaintiff sought to add were involved with Plaintiff's unrelated criminal matter, which was stricken from the case, these new defendants were not appropriate parties to this action. Further, Judge Davis entered two **additional** orders denying Plaintiff's motions for reconsideration on this issue, finding that Plaintiff presented no legal reason to reconsider his denial of her attempt to add various claims unrelated to the alleged wrongdoing that occurred at the ballpark. (See Docket Nos. 55 and 74.) Lastly, on August 28, 2017, Judge Davis entered an order granting summary judgment as to Plaintiff's *Monell* claim against the City of Philadelphia. (Docket No. 108).

Therefore, to avoid further confusion, I will spell out exactly what claims and defendants remain in this matter. Count I is a false arrest claim as to Officer Kelechewisky. Count II is an excessive force claim against Officers Kelechewisky and Bee. Count III is an unlawful seizure claim against Officers Kelechewisky, Ortiz, Kovacs and Bee. Count IV is a claim for violation of Plaintiff's First Amendment rights against Officer Kelechewisky. Count VI is a premises liability claim against the City of Philadelphia. There are no other defendants in this case and no other claims, and Plaintiff should proceed with this case against only those and on only those claims. Plaintiff shall not continue to include any other defendants or any other claims in her litigation of this matter.